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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 KIM MCBRIDE, TERRY
11 SALAZAR, TAMMY HELBLE, and
12 NANCY MELLO, individually and
13 on behalf of all others similarly
situated,

14 Plaintiffs,

15 v.

16 JENNY CRAIG INC., a Delaware
17 corporation; JENNY CRAIG
18 DIRECT, INC., a Delaware
19 corporation; and DOES 1 through
20 10, inclusive,

21 Defendants.
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CASE NO. 3:07-CV-02382-JLS-AJB

CLASS ACTION

PROTECTIVE ORDER

**HONORABLE ANTHONY J.
BATTAGLIA**

Dept. A

1 Plaintiffs Kim McBride, Terry Salazar, Tammy Helble, and Nancy
2 Mello and defendant Jenny Craig Inc. hereby stipulate and agree, subject to the
3 approval of the Court, to the following terms:

4 1. This Protective Order (“Order”) shall govern the handling of
5 individual putative class member contact information produced by Defendant Jenny
6 Craig Inc. (“Defendant), including documents containing such information, by any
7 party or non-party within the context of this litigation.

8 2. This Order shall also govern the handling of information related to
9 settlement discussions. The parties are currently engaging in settlement discussions
10 and intend for this order to govern the handling of all information produced by
11 either Defendant or Plaintiffs during settlement discussion, including documents
12 containing such information, by any party or non-party within the context of this
13 litigation.

14 3. In connection with discovery proceeding in this action, any party to
15 this action (hereinafter “Designating Party”) shall have the right to designate any
16 Document containing the contact information of any putative class member or any
17 document related to settlement discussions, as confidential under the terms of this
18 Order. Any documents containing the contact information of any putative class
19 member shall be designated to be confidential by any party by stamping or affixing
20 thereon the word “CONFIDENTIAL”. Stamping the legend “CONFIDENTIAL”
21 on the cover of any multi-page document shall designate all pages of the document
22 as confidential, unless otherwise indicated by the Designating Party.

23 4. Any documents containing or related to settlement discussions shall be
24 designated to be confidential by any party by stamping or affixing thereon the word
25 “CONFIDENTIAL SETTLEMENT.” Stamping the legend “CONFIDENTIAL
26 SETTLEMENT” on the cover of any multi-page document shall designate all pages
27 of the document as confidential, unless otherwise indicated by the Designating
28 Party.

1 5. A party who inadvertently fails to mark an item as
2 “CONFIDENTIAL” or “CONFIDENTIAL SETTLEMENT” at the time of
3 production shall have thirty (30) days thereafter in which to correct its failure. Such
4 correction and notice thereof shall be made in writing, accompanied by substitute
5 copies of each item, appropriately marked as “Confidential” OR “Confidential
6 Settlement”. Upon such notice, the receiving party shall return or destroy the
7 previously unmarked items and all copies thereof.

8 6. Plaintiffs’ attorneys of record, Defendant’s attorney of record and all
9 persons bound by the terms of this Protective Order shall use any putative class
10 member contact information only for the purpose of prosecution or defense of this
11 action. Plaintiffs’ counsel and Defense Counsel acknowledge that they may not use
12 any document related to settlement discussions for the purpose of prosecution or
13 defense of this action. However, to the extent that said information is deemed
14 discoverable such information may be used for such purposes. Plaintiffs’ attorneys
15 of record and Defendant’s attorney of record shall exercise reasonable care to
16 insure that the information and documents governed by this Protective Order are (i)
17 used only for the purposes specified herein; and (ii) disclosed only to persons to
18 whom disclosure of such information and documents is authorized by this
19 Protective Order.

20 7. All putative class member contact information produced by Defendant
21 pursuant to this Protective Order shall remain in the custody of Plaintiffs’ attorneys
22 of record and shall not be disclosed to the individual named plaintiffs in this action.
23 Plaintiffs’ attorneys of record will not disclose putative class members’ contact
24 information to any other person or party except that, and solely for the purpose of
25 this litigation, any such putative class member contact information may be
26 disclosed by Plaintiffs’ attorneys of record to the following person(s):

27 a. Experts and/or consultants (together with their clerical staff)
28 retained by Plaintiffs’ attorneys of record on behalf of Plaintiffs;

1 b. Plaintiffs' attorneys of record's partners and associates,
2 paralegals, clerks, assistants and other persons employed by such attorneys;
3 c. Outside copy services and their employees;
4 d. Professional claim administrators retained by counsel to perform
5 mailings, claim processing, and/or processing of any settlement in this action;
6 e. The Court and its personnel; and
7 f. Any other person(s) as to whom the parties reasonably believe
8 require the information to aid in the prosecution, defense or settlement of this action
9 pursuant to Paragraph 6.

10 8. Any person to whom Plaintiffs' attorneys of record give access to
11 putative class member contact information pursuant to Paragraph 7 shall first be
12 given a copy of this Order and shall agree in writing to be bound by its terms, by
13 signing a copy of the Confidentiality Agreement attached hereto as Exhibit "A".
14 The law firm obtaining the person's signature on the Confidentiality Agreement
15 will retain the original signed agreement. Any other person to whom Plaintiffs'
16 attorneys of record give access to putative class member contact information shall
17 first be advised by the disclosing party that the information is confidential and is
18 not to be used or disclosed for any purpose outside this litigation.

19 9. Any document submitted to the Court in connection with this action
20 which contains putative class member contact information shall be redacted to hide
21 from view the name, address, phone number, and any other contact information
22 (i.e., email address). Upon the filing of a Consent to Join this action by any
23 individual class member, or in any sworn statement submitted to the Court in
24 connection with this action, the class member's name is not required to be redacted.
25 The redacted information will not be revealed to any party or the Court unless so
26 ordered by the Court.

27 10. Any person receiving putative class member contact information or
28 information related to settlement discussions under the terms of this Order shall be

1 subject to the jurisdiction of this Court for purposes of any proceedings relating to
2 the performance under, compliance with or violations of this Order.

3 11. Any person who receives putative class member contact information or
4 information related to settlement discussions under the terms of this Order shall
5 maintain such material in secure and safe areas and shall exercise due and proper
6 care with respect to storage, custody, use and/or dissemination of such information.

7 12. If any putative class member contact information or any information
8 related to settlement discussions is produced under the terms of this Order is
9 disclosed to any person other than in a manner authorized by this Order, Plaintiffs'
10 attorneys of record, or Defendants' attorneys of record, upon discovery of the
11 disclosure, shall immediately inform opposing counsel of all facts pertinent to the
12 disclosure that, after due diligence and prompt investigation, are known, and shall
13 immediately make all reasonable efforts to prevent further disclosure by each
14 unauthorized person who received such information. The attorney of record who
15 first learned of the disclosure, shall then disclose all relevant facts of any
16 unauthorized disclosure to the Court.

17 13. A violation or breach of this Order shall entitle the aggrieved party and
18 the aggrieved putative class member to seek and recover damages and/or injunctive
19 relief from the court issuing the Order, for any and all harm caused by the violation
20 or breach of this Order. The award of damages and/or injunctive relief shall be
21 within the discretion of the court upon good cause shown. In any motion, action, or
22 proceeding brought in accordance with this paragraph, the court shall award the
23 prevailing party reasonable attorneys' fees and costs.

24 14. This Order does not constitute a waiver of any party's rights to object
25 to discovery on any grounds. This Order does not guarantee the production of
26 information that any party might consider to be protected from disclosure on any
27 grounds.

28 15. This Protective Order may be amended and exceptions may be made

1 only by written stipulation of the parties or by the order of the Court. The
2 provisions of this Protective Order are subject to further Court order based upon
3 public policy and other considerations.

4 16. If any Party agrees to produce documents or information informally in
5 the Action, without reference to one of the methods of discovery authorized by the
6 Federal Rules of Civil Procedure, the terms of this Order shall apply.

7 17. The terms of this Order shall survive and remain in effect after
8 termination of the action.

9 IT IS SO STIPULATED.

10 Dated: September 4, 2008

McDERMOTT WILL & EMERY LLP

11
12 By: /s/ RICHARD FREY
13 Richard Frey
14 Attorneys for Defendant
JENNY CRAIG INC.
e-mail: rfrey@mwe.com

15 Dated: September 4, 2008

MASS & MONTES LLP

16
17 By: /s/ ROBERT MONTES, JR.
18 Robert Montes, Jr.
19 Attorneys for Plaintiffs
20 KIM MCBRIDE, TERRY
21 SALAZAR, TAMMY HELBLE,
22 AND NANCY MELLO on behalf of
23 themselves and all others similarly
24 situated
25 E-mail: rmontes@massmontes.com
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ORDER

FOR GOOD CAUSE SHOWN,
IT IS SO ORDERED.

DATED: September 8, 2008



Hon. Anthony J. Battaglia
U.S. Magistrate Judge
United States District Court

EXHIBIT "A"

CONFIDENTIALITY AGREEMENT

The undersigned hereby does solemnly swear that he/she is fully familiar with the terms of the Stipulation for Protective Order (Order), September 3, 2008, entered in the action titled *McBride et al. v. Jenny Craig, et al.*, United States District Court, Southern California District Court Case No. 3:07-CV-02382-JLS-AJB. The undersigned certifies that documents designated as CONFIDENTIAL are being or may be provided pursuant to the terms and restrictions of the Order. The undersigned hereby agrees to comply with and be bound by the terms and conditions of the Order unless and until modified by further order of the Court. The undersigned understands and agrees that all such confidential documents and copies thereof, including, but not limited to, any notes or other transcriptions made therefrom, which have not been previously destroyed, shall be returned no later than 30 days after the termination of this action to the counsel who provided such materials. The undersigned hereby consents to the jurisdiction of the United States District Court for the Southern District of California for the purposes of enforcing this order.

Date: _____

(Print Name)

(Signature)